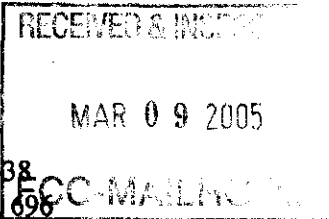


Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

)
Section 63.71 Application of Choice One)
Communications Inc. on Behalf of Certain of its)
Subsidiaries for Authority to Discontinue Domestic)
Telecommunications Services)

WC Docket No. 05-38
Comp. Pol. File No. 696



ORDER

Adopted: March 4, 2005

Released: March 4, 2005

By the Chief, Competition Policy Division:

I. INTRODUCTION

1. In this Order, we grant the application of Choice One Communications Inc., filed on behalf of certain of its subsidiaries (Choice One Companies), including Choice One Communications of Connecticut Inc., Choice One Communications of Massachusetts Inc., Choice One Communications of New York Inc., and Choice One Communications of Pennsylvania Inc. (collectively, Choice One or Applicants), to discontinue the provision of certain U.S. domestic telecommunications services pursuant to section 214(a) of the Communications Act of 1934, as amended (the Act),¹ and section 63.71 of the Federal Communications Commission's (Commission) rules.² As explained in further detail below, in order to facilitate a transition to alternative services, we grant Choice One authority to discontinue service consistent with its filed representation that it will continue to provide service to the sole commenter in this proceeding, Harbro Sales & Service, Inc. (Harbro).

II. BACKGROUND

2. On January 12, 2005, Choice One filed an application with the Commission requesting authority, under section 214(a) of the Act and section 63.71 of the Commission's rules, to discontinue the provision of certain domestic telecommunications services to a limited number of customers in certain geographic areas. In its application, Choice One indicates that on November 8, 2004, the United States Bankruptcy Court for the Southern District of New York approved a pre-packaged plan for its reorganization that was consummated shortly thereafter. Choice One states that its current plan to discontinue certain services is part of its ongoing review of operations in order to effectuate the realignment of its business. Specifically, Choice One seeks authority to discontinue local, long distance, data and/or Internet services provided through operations located in nine central offices in Connecticut, one in Massachusetts, four in New York and one in Pennsylvania. Choice One indicates that it provides these services to approximately 617 customers located in the markets of Hartford and New Haven, Connecticut; Rochester and Albany, New York; Millersville, Pennsylvania; and Worcester, Massachusetts.³ Choice One

¹ 47 U.S.C. § 214(a).

² 47 C.F.R. § 63.71.

³ Choice One indicates that it is non-dominant with respect to these services.

states that it plans to discontinue the relevant services to these customers no later than March 15, 2005. Choice One further states that it provided written notice of the proposed discontinuance to all affected customers in the states of Massachusetts, New York and Pennsylvania by letter dated January 7, 2005, and that affected customers in Connecticut were notified by letter dated January 11, 2005 in conformance with section 63.71(a) of the Commission's rules.

3. By Public Notice issued February 1, 2005, the Commission notified the public that, in accordance with section 63.71(c), the application would be deemed to be automatically granted on the thirty-first (31st) day after the release date of the notice, unless the Commission notified Choice One that the grant would not be automatically effective.⁴ The Commission further noted that, in their notices to customers, the Choice One Companies indicate that they planned to discontinue services as early as March 7th or March 11, 2005, and that in the application Choice One states that it anticipates discontinuing services no later than March 15, 2005. Accordingly, the Commission stated that pursuant to section 63.71(c), and absent further Commission action, Choice One could not terminate services to the customers affected by its application until March 15, 2005. The Commission received one comment in response to Choice One's notice to its customers.⁵ Specifically, Harbro filed comments objecting to Choice One's proposed discontinuance primarily on the grounds that Harbro could not fully transition to alternative service by the planned discontinuance date.⁶ Subsequently, Harbro informed the Commission of its continuing efforts to arrange for alternative services and requested that the Commission require that Choice One extend its provision of services until at April 6, 2005, by which time Harbro expects alternative services from Verizon should be fully installed.⁷ On March 2, 2005, Choice One filed a letter indicating that it has no objection to continuing to provide service to Harbro until April 6, 2005 in order to facilitate Harbro's transition to alternative services, and stating that it will have to make certain adjustments to its network, at no additional cost to Harbro, in order to continue service for the extended period.⁸ On March 2, 2005, Harbro filed a rebuttal letter reiterating its request for an extension of service until April 6, 2005, and

⁴ *Comments Invited on Application of Choice One Communications Inc. on Behalf of Certain of its Subsidiaries to Discontinue Domestic Telecommunications Services*, Public Notice, WC Docket No. 05-38, Comp. Pol. File No. 696, DA 05-275 (rel. Feb. 1, 2005).

⁵ See Harbro Comments.

⁶ See Harbro Comments at 1 (seeking to delay the discontinuance for at least 60 days, and claiming that monthly expenses will increase by 33% with an alternative provider).

⁷ Letter from Jason Malo, Harbro Sales & Service, to the Federal Communications Commission (dated February 24, 2005) (Harbro Letter).

⁸ See Letter from Dana Frix and Kemal Hawa, Chadbourne & Parke LLP, Counsel for Choice One, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-38 (March 2, 2005) (Choice One Letter). Choice One indicates that it: (1) currently provides T-1 service and four POTS lines to Harbro; (2) has no objection to continuing to provide services to Harbro until April 6, 2005; (3) will need to groom its network so that the T-1 service will be directed to a Choice One collocation cage other than the one which currently serves Harbro; (4) can perform changes to the T-1 arrangement during the evening when Harbro is closed to make any changes transparent to Harbro; (5) can perform changes to three of Harbro's POTS lines located in Harbro's main offices with a 15-30 minute service call from a Choice One technician; (6) is conducting a site survey to determine how best to continue to provision Harbro's fourth POTS line which is apparently located in a different building; and (7) will make all of these arrangements without additional cost to Harbro. *Id.* at 1-2.

disputing some of the facts included in Choice One's letter regarding prior negotiations and circumstances during this proceeding.⁹

4. Section 214(a) of the Communications Act, as amended, states that "[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby."¹⁰ The primary purpose of this requirement is to reduce the harm to consumers caused by discontinuances of service, which is an important aspect of the Commission's general obligation under the Communications Act to protect and promote the public interest.¹¹ As the Commission has stated, "we have retained the right to delay grant of a discontinuance authorization if we believe an unreasonable degree of customer hardship would result,"¹² and will review each application to determine whether proper notice has been given, whether customers or other end users are able to receive service or a reasonable substitute from another carrier, and whether the public convenience and necessity is otherwise adversely affected.¹³

5. The Commission has considerable discretion in determining whether to grant a carrier authority to discontinue service pursuant to section 214.¹⁴ Balancing the interests of the carrier and the affected user community, the Commission considers a number of factors including: (1) the financial impact on the common carrier of continuing to provide the service; (2) the need for the service in general; (3) the need for the particular facilities in question; (4) the existence, availability, and adequacy of alternatives; and (5) increased charges for alternative services, although this factor may be outweighed by other considerations.¹⁵

⁹ Letter from Jason Malo, Harbro Sales & Service, to Ms. Marlene H. Dortch, WC Docket No. 05-38 (March 2, 2005) (Harbro Rebuttal Letter).

¹⁰ 47 U.S.C. § 214(a).

¹¹ See 47 U.S.C. § 201.

¹² *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, First Report and Order, CC Docket No. 79-252, 85 FCC 2d 1, 49 (1980) (*Competitive Carrier First Report and Order*).

¹³ See 47 C.F.R. § 63.71(a); see, e.g., *AT&T Application to Discontinue Interstate Sent-Paid Coin Service Not Automatically Granted*, Public Notice, NSD File No. W-P-D-497 (Aug. 3, 2001) (requiring AT&T to show how it will minimize the negative impact on the affected customers).

¹⁴ *FCC v. RCA Communications, Inc.*, 73 S. Ct. 998, 1002 (1953). See also *Verizon Telephone Companies, Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation*, Order, WC Docket No. 02-237, FCC 03-256 (rel. Oct. 22, 2003).

¹⁵ *Application for Authority Pursuant to Section 214 of the Communications Act of 1934 to Cease Providing Dark Fiber Service*, File Nos. W-P-C-6670 and W-P-D-364, 8 FCC Rcd 2589, 2600, para. 54 (1993) (*Dark Fiber Order*), remanded on other grounds, *Southwestern Bell v. FCC*, 19 F.3d 1475 (D.C. Cir. 1994). See *Verizon Telephone Companies, Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation*, Order, WC Docket No. 02-237, FCC 03-256 (rel. Oct. 22, 2003).

III. DISCUSSION

6. We find that the record supports granting Choice One's request to discontinue service in accordance with its filed representations in this proceeding. Specifically, and as stated above, Choice One indicates that it is willing to continue providing services to Harbro until April 6, 2005 in order to facilitate Harbro's transition to alternative services, and that, with adjustments to its network, it will be able to continue such services at no additional cost and no loss of overall service to Harbro.¹⁶ On the basis of Choice One's representations and considering the five factors identified by the Commission for evaluating applications to discontinue service, we find that the proposed discontinuance will not result in an unreasonable degree of customer hardship, and, therefore, that there will be no adverse effect on the public convenience and necessity.¹⁷

7. Applying the first of the Commission's factors -- the financial impact of continuing to provide the service for the carrier seeking to discontinue -- we note that, in its application, Choice One specifically states that it has undergone a successful reorganization following the filing of its bankruptcy petition on October 5, 2004, in the United States Bankruptcy Court for the Southern District of New York, and that it plans to discontinue the collocation operations subject to its application in order to effectuate the realignment of its business as part of its ongoing review of operations.¹⁸ We thus find that the financial impact of continuing to provide these services for an extended period beyond the planned discontinuance date could be burdensome. Applying factors two and three -- the need for the services in general and for the particular services in question -- we note that, in its filings, Harbro asserts that its business depends on having its two locations connected through the services currently provided by Choice One, and that service termination prior to the installation of alternative services would have a crippling effect on its business.¹⁹ Finally, considering factor four -- the existence, availability, and adequacy of alternatives -- the record indicates that Harbro plans to contract for alternative services with Verizon, and that a full transition to Verizon's services cannot be accomplished within the time allowed by Choice One's originally planned discontinuance date.²⁰ We find, however, as noted above, that the record in this proceeding makes clear that, to the extent Harbro alleges that it cannot migrate within the

¹⁶ See Choice One Letter at 1; see also note 8, *supra* (describing Choice One's representations regarding continued service to Harbro).

¹⁷ We find that this is also consistent with our evaluation in prior orders of discontinuance applications involving similar circumstances. See *In the Matter of Section 63.71 Application of Winstar Communications, LLC and Certain of its Subsidiaries for Authority to Discontinue Domestic Telecommunications Services*, Order, WC Docket No. 04-284, Comp. Pol. File No. 688 (rel. Aug. 30, 2004); *In the Matter of Section 63.71 Application of LDMI Telecommunications, Inc. for Authority to Discontinue the Provision of Domestic Telecommunications Services to Payphone Service Providers in Michigan and Ohio*, Order, Comp. Pol. File No. 648, 18 FCC Rcd 11301 (rel. May 30, 2003); *In the Matter of Cable & Wireless USA, Inc. Application for Authority to Discontinue Certain U.S. Domestic Telecommunications Services*, Order, Comp. Pol. File No. 663 (rel. Dec. 12, 2003).

¹⁸ See Choice One Application at 2.

¹⁹ See Harbro Comments at 1; Harbro Letter at 2.

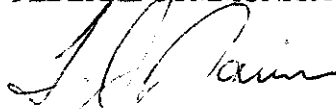
²⁰ See Harbro Comments at 1; Harbro Letter at 2; Harbro Rebuttal Letter at 4. We note that the fifth factor, increased charges for alternative services, was originally raised in Harbro's comments as an issue in this proceeding based on Harbro's claim that its expenses will increase by at least 33% as a result of Choice One's discontinuance. See Harbro Comments at 1. In balancing all of the factors, however, we do not find that Harbro's concerns over the cost of transitioning to alternative services justify a denial of Choice One's request to discontinue services.

proposed period, Choice One has provided sufficient assurances that it will maintain service in order to allow Harbro to migrate to alternative services until Harbro's requested date of April 6, 2005. Given the circumstances, we find Choice One's request to discontinue service reasonable subject to its representations. After balancing the relevant factors, we therefore conclude that Choice One shall be permitted to discontinue its services in accordance with its filed representations.

IV. ORDERING CLAUSE

8. Accordingly, pursuant to sections 1, 4(i), and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 214, and sections 0.91, 0.291, and 63.71 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 63.71, IT IS ORDERED that the application of Choice One Communications Inc.; Choice One Communications of Connecticut Inc.; Choice One Communications of Massachusetts Inc.; Choice One Communications of New York Inc.; and Choice One Communications of Pennsylvania Inc. to discontinue domestic telecommunications IS GRANTED to the extent declared herein, consistent with Choice One's filed representations in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION



Thomas J. Navin
Chief, Competition Policy Division
Wireline Competition Bureau